

1 AN ACT concerning highways.

2 Be it enacted by the People of the State of Illinois,  
3 represented in the General Assembly:

4 Section 5. The Illinois Highway Code is amended by  
5 changing Section 9-113 as follows:

6 (605 ILCS 5/9-113) (from Ch. 121, par. 9-113)

7 Sec. 9-113. (a) No ditches, drains, track, rails, poles,  
8 wires, pipe line or other equipment of any public utility  
9 company, municipal corporation or other public or private  
10 corporation, association or person shall be located, placed  
11 or constructed upon, under or along any highway, or upon any  
12 township or district road, without first obtaining the  
13 written consent of the appropriate highway authority as  
14 hereinafter provided for in this Section.

15 (b) The State and county highway authorities are  
16 authority--is authorized to promulgate reasonable and  
17 necessary rules, regulations, and specifications for State  
18 highways for the administration of this Section. In addition  
19 to rules promulgated under this subsection (b), the State  
20 highway authority shall and a county highway authority may  
21 adopt coordination strategies and practices designed and  
22 intended to establish and implement effective communication  
23 respecting planned highway projects that the State or county  
24 highway authority believes may require removal, relocation,  
25 or modification in accordance with subsection (f) of this  
26 Section. The strategies and practices adopted shall include  
27 but need not be limited to the delivery of 5 year programs,  
28 annual programs, and the establishment of coordination  
29 councils in the locales and with the utility participation  
30 that will best facilitate and accomplish the requirements of  
31 the State and county highway authority acting under

1 subsection (f) of this Section. The utility participation  
2 shall include assisting the appropriate highway authority in  
3 establishing a schedule for the removal, relocation, or  
4 modification of the owner's facilities in accordance with  
5 subsection (f) of this Section. In addition, each utility  
6 shall designate in writing to the Secretary of Transportation  
7 or his or her designee an agent for notice and the delivery  
8 of programs. The coordination councils must be established on  
9 or before January 1, 2002. The 90 day deadline for removal,  
10 relocation, or modification of the ditches, drains, track,  
11 rails, poles, wires, pipe line, or other equipment in  
12 subsection (f) of this Section shall be enforceable upon the  
13 establishment of a coordination council in the district or  
14 locale where the property in question is located. The  
15 coordination councils organized by a county highway authority  
16 shall include the county engineer, the County Board Chairman  
17 or his or her designee, and with such utility participation  
18 as will best facilitate and accomplish the requirements of a  
19 highway authority acting under subsection (f) of this  
20 Section. Should a county highway authority decide not to  
21 establish coordination councils, the 90 day deadline for  
22 removal, relocation, or modification of the ditches, drains,  
23 track, rails, poles, wires, pipe line, or other equipment in  
24 subsection (f) of this Section shall be waived for those  
25 highways.

26 (c) In the case of non-toll federal-aid fully  
27 access-controlled State highways, the State highway authority  
28 shall not grant consent to the location, placement or  
29 construction of ditches, drains, track, rails, poles, wires,  
30 pipe line or other equipment upon, under or along any such  
31 non-toll federal-aid fully access-controlled State highway,  
32 which:

33 (1) would require cutting the pavement structure  
34 portion of such highway for installation or, except in

1 the event of an emergency, would require the use of any  
2 part of such highway right-of-way for purposes of  
3 maintenance or repair. Where, however, the State highway  
4 authority determines prior to installation that there is  
5 no other access available for maintenance or repair  
6 purposes, use by the entity of such highway right-of-way  
7 shall be permitted for such purposes in strict accordance  
8 with the rules, regulations and specifications of the  
9 State highway authority, provided however, that except in  
10 the case of access to bridge structures, in no such case  
11 shall an entity be permitted access from the  
12 through-travel lanes, shoulders or ramps of the non-toll  
13 federal-aid fully access-controlled State highway to  
14 maintain or repair its accommodation; or

15 (2) would in the judgment of the State highway  
16 authority, endanger or impair any such ditches, drains,  
17 track, rails, poles, wires, pipe lines or other equipment  
18 already in place; or

19 (3) would, if installed longitudinally within the  
20 access control lines of such highway, be above ground  
21 after installation except that the State highway  
22 authority may consent to any above ground installation  
23 upon, under or along any bridge, interchange or grade  
24 separation within the right-of-way which installation is  
25 otherwise in compliance with this Section and any rules,  
26 regulations or specifications issued hereunder; or

27 (4) would be inconsistent with Federal law or with  
28 rules, regulations or directives of appropriate Federal  
29 agencies.

30 (d) In the case of accommodations upon, under or along  
31 non-toll federal-aid fully access-controlled State highways  
32 the State highway authority may charge an entity reasonable  
33 compensation for the right of that entity to longitudinally  
34 locate, place or construct ditches, drains, track, rails,

1 poles, wires, pipe line or other equipment upon, under or  
2 along such highway. Such compensation may include in-kind  
3 compensation.

4 Where the entity applying for use of a non-toll  
5 federal-aid fully access-controlled State highway  
6 right-of-way is a public utility company, municipal  
7 corporation or other public or private corporation,  
8 association or person, such compensation shall be based upon  
9 but shall not exceed a reasonable estimate by the State  
10 highway authority of the fair market value of an easement or  
11 leasehold for such use of the highway right-of-way. Where  
12 the State highway authority determines that the applied-for  
13 use of such highway right-of-way is for private land uses by  
14 an individual and not for commercial purposes, the State  
15 highway authority may charge a lesser fee than would be  
16 charged a public utility company, municipal corporation or  
17 other public or private corporation or association as  
18 compensation for the use of the non-toll federal-aid fully  
19 access-controlled State highway right-of-way. In no case  
20 shall the written consent of the State highway authority give  
21 or be construed to give any entity any easement, leasehold or  
22 other property interest of any kind in, upon, under, above or  
23 along the non-toll federal-aid fully access-controlled State  
24 highway right-of-way.

25 Where the compensation from any entity is in whole or in  
26 part a fee, such fee may be reasonably set, at the election  
27 of the State highway authority, in the form of a single lump  
28 sum payment or a schedule of payments. All such fees charged  
29 as compensation may be reviewed and adjusted upward by the  
30 State highway authority once every 5 years provided that any  
31 such adjustment shall be based on changes in the fair market  
32 value of an easement or leasehold for such use of the  
33 non-toll federal-aid fully access-controlled State highway  
34 right-of-way. All such fees received as compensation by the

1 State highway authority shall be deposited in the Road Fund.

2 (e) Any entity applying for consent shall submit such  
3 information in such form and detail to the appropriate  
4 highway authority as to allow the authority to evaluate the  
5 entity's application. In the case of accommodations upon,  
6 under or along non-toll federal-aid fully access-controlled  
7 State highways the entity applying for such consent shall  
8 reimburse the State highway authority for all of the  
9 authority's reasonable expenses in evaluating that entity's  
10 application, including but not limited to engineering and  
11 legal fees.

12 (f) Any ditches, drains, track, rails, poles, wires,  
13 pipe line, or other equipment located, placed, or constructed  
14 upon, under, or along a State highway with the consent of the  
15 State or county highway authority under this Section shall,  
16 upon written notice by the State or county, highway authority  
17 be removed, relocated, or modified by the owner, the owner's  
18 agents, contractors, or employees subject--to--removal,  
19 relocation-or-modification at no expense to the State or  
20 county highway authority when and as deemed necessary by the  
21 State or county highway authority for highway or highway  
22 safety purposes. The notice shall be properly given after the  
23 completion of engineering plans, the receipt of the necessary  
24 permits issued by the appropriate State and county highway  
25 authority to begin work, and the establishment of sufficient  
26 rights-of-way for a given utility authorized by the State or  
27 county highway authority to remain on the highway  
28 right-of-way such that the unit of local government or other  
29 owner of any facilities receiving notice in accordance with  
30 this subsection (f) can proceed with relocating, replacing,  
31 or reconstructing the ditches, drains, track, rails, poles,  
32 wires, pipe line, or other equipment. If a permit  
33 application to relocate on a public right-of-way is not filed  
34 within 15 days of the receipt of final engineering plans, the

1 notice precondition of a permit to begin work is waived.  
2 However, under no circumstances shall this notice provision  
3 be construed to require the State or any government  
4 department or agency to purchase additional rights-of-way to  
5 accommodate utilities. If, within 90 60 days after receipt of  
6 such written notice, the ditches, drains, track, rails,  
7 poles, wires, pipe line, or other equipment have not been  
8 removed, relocated, or modified to the reasonable  
9 satisfaction of the State or county highway authority, or if  
10 arrangements are not made satisfactory to the State or county  
11 highway authority for such removal, relocation, or  
12 modification, the State or county highway authority may  
13 remove, relocate, or modify such ditches, drains, track,  
14 rails, poles, wires, pipe line, or other equipment and bill  
15 the owner thereof for the total cost of such removal,  
16 relocation, or modification. The scope of the project shall  
17 be taken into consideration by the State or county highway  
18 authority in determining satisfactory arrangements. The State  
19 or county highway authority shall determine the terms of  
20 payment of those costs provided that all costs billed by the  
21 State or county highway authority shall not be made payable  
22 over more than a 5 year period from the date of billing. The  
23 State and county highway authority shall have the power to  
24 extend the time of payment in cases of demonstrated financial  
25 hardship by a unit of local government or other public owner  
26 of any facilities removed, relocated, or modified from the  
27 highway right-of-way in accordance with this subsection (f).  
28 This paragraph shall not be construed to prohibit the State  
29 or county highway authority from paying any part of the cost  
30 of removal, relocation, or modification where such payment is  
31 otherwise provided for by State or federal statute or  
32 regulation. At any time within 90 days after written notice  
33 was given, the owner of the drains, track, rails, poles,  
34 wires, pipe line, or other equipment may request the district

1 engineer or, if appropriate, the county engineer for a waiver  
2 of the 90 day deadline. The appropriate district or county  
3 engineer shall make a decision concerning waiver within 10  
4 days of receipt of the request and may waive the 90 day  
5 deadline if he or she makes a written finding as to the  
6 reasons for waiving the deadline. Reasons for waiving the  
7 deadline shall be limited to acts of God, war, the scope of  
8 the project, the State failing to follow the proper notice  
9 procedure, and any other cause beyond reasonable control of  
10 the owner of the facilities. Waiver must not be unreasonably  
11 withheld. If 90 days after written notice was given, the  
12 ditches, drains, track, rails, poles, wires, pipe line, or  
13 other equipment have not been removed, relocated, or modified  
14 to the satisfaction of the State or county highway authority,  
15 no waiver of deadline has been requested or issued by the  
16 appropriate district or county engineer, and no satisfactory  
17 arrangement has been made with the appropriate State or  
18 county highway authority, the State or county highway  
19 authority or the general contractor of the building project  
20 may file a complaint in the circuit court for an emergency  
21 order to direct and compel the owner to remove, relocate, or  
22 modify the drains, track, rails, poles, wires, pipe line, or  
23 other equipment to the satisfaction of the appropriate  
24 highway authority. The complaint for an order shall be  
25 brought in the circuit in which the subject matter of the  
26 complaint is situated or, if the subject matter of the  
27 complaint is situated in more than one circuit, in any one of  
28 those circuits.

29 (g) It shall be the sole responsibility of the entity,  
30 without expense to the State highway authority, to maintain  
31 and repair its ditches, drains, track, rails, poles, wires,  
32 pipe line or other equipment after it is located, placed or  
33 constructed upon, under or along any State highway and in no  
34 case shall the State highway authority thereafter be liable

1 or responsible to the entity for any damages or liability of  
2 any kind whatsoever incurred by the entity or to the entity's  
3 ditches, drains, track, rails, poles, wires, pipe line or  
4 other equipment.

5 (h) Upon receipt of an application therefor, consent to  
6 so use a highway may be granted subject to such terms and  
7 conditions not inconsistent with this Code as the highway  
8 authority deems for the best interest of the public. The  
9 terms and conditions required by the appropriate highway  
10 authority may include but need not be limited to  
11 participation by the party granted consent in the strategies  
12 and practices adopted under subsection (b) of this Section.

13 The petitioner shall pay to the owners of property abutting  
14 upon the affected highways established as though by common  
15 law plat all damages the owners may sustain by reason of such  
16 use of the highway, such damages to be ascertained and paid  
17 in the manner provided by law for the exercise of the right  
18 of eminent domain.

19 (i) Such consent shall be granted by the Department in  
20 the case of a State highway; by the county board or its  
21 designated county superintendent of highways in the case of a  
22 county highway; by either the highway commissioner or the  
23 county superintendent of highways in the case of a township  
24 or district road, provided that if consent is granted by the  
25 highway commissioner, the petition shall be filed with the  
26 commissioner at least 30 days prior to the proposed date of  
27 the beginning of construction, and that if written consent is  
28 not given by the commissioner within 30 days after receipt  
29 of the petition, the applicant may make written application  
30 to the county superintendent of highways for consent to the  
31 construction. This Section does not vitiate, extend or  
32 otherwise affect any consent granted in accordance with law  
33 prior to the effective date of this Code to so use any  
34 highway.

1           (j) Nothing in this Section shall limit the right of a  
2 highway authority to permit the location, placement or  
3 construction or any ditches, drains, track, rails, poles,  
4 wires, pipe line or other equipment upon, under or along any  
5 highway or road as a part of its highway or road facilities  
6 or which the highway authority determines is necessary to  
7 service facilities required for operating the highway or  
8 road, including rest areas and weigh stations.

9           (k) Paragraphs (c) and (d) of this Section shall not  
10 apply to any accommodation located, placed or constructed  
11 with the consent of the State highway authority upon, under  
12 or along any non-toll federal-aid fully access-controlled  
13 State highway prior to July 1, 1984, provided that  
14 accommodation was otherwise in compliance with the rules,  
15 regulations and specifications of the State highway  
16 authority.

17           (l) The consent to be granted pursuant to this Section  
18 by the appropriate highway authority shall be effective only  
19 to the extent of the property interest of the State or  
20 government unit served by that highway authority. Such  
21 consent shall not be binding on any owner of the fee over or  
22 under which the highway or road is located and shall not  
23 otherwise relieve the entity granted that consent from  
24 obtaining by purchase, condemnation or otherwise the  
25 necessary approval of any owner of the fee over or under  
26 which the highway or road is located. This paragraph shall  
27 not be construed as a limitation on the use for highway or  
28 road purposes of the land or other property interests  
29 acquired by the public for highway or road purposes,  
30 including the space under or above such right-of-way.

31           (m) The provisions of this Section apply to all permits  
32 issued by the Department of Transportation and the

1 appropriate State or county highway authority.

2 (Source: P.A. 85-540.)